

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
International Broadcasting Corporation	)	File Number EB-07-SJ-068
	)	
San Juan, PR	)	NAL/Acct. No. 200832680001
	)	
Antenna Structure Registration # 1026702	)	FRN 0003736220
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** March 12, 2008

**Released:** March 14, 2008

By the Associate Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (“Order”), we deny in part and grant in part the petition for reconsideration filed by International Broadcasting Corporation (“IBC”), owner of antenna structure # 1026702, in Canovanas, Puerto Rico, of the *Forfeiture Order* issued January 9, 2008.<sup>1</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$13,000 for IBC’s willful and repeated violation of Sections 17.50 and 17.57 of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involved IBC’s failure to paint its antenna structure to maintain good visibility, and failure to notify the Commission of a change in antenna structure ownership.

**II. BACKGROUND**

2. On September 7 and 11, 2007, agents from the Commission’s San Juan Office of the Enforcement Bureau (“San Juan Office”) inspected IBC’s antenna structure and noted that the tower’s paint was extremely faded and washed away in most areas. The agents consulted the Commission’s Antenna Structure Registration (“ASR”) database and noted that “Del Pueblo Radio Corporation” was listed as the owner of antenna structure # 1026702. After the owner stated that IBC acquired the tower in 2003, the agents informed him that he must update the structure’s ownership information in the ASR database. On both days, the agents also warned IBC’s owner that the structure needed to be repainted.

3. On October 25, 2007, agents from the San Juan Office again observed antenna structure # 1026702 and found that its paint was still extremely faded and washed away in most areas. On November 1, 2007, Del Pueblo Radio Corporation was still listed as the owner of the structure in the ASR database.

4. On November 13, 2007, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to IBC in the amount of thirteen thousand dollars (\$13,000), for the apparent willful and

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<sup>1</sup> *International Broadcasting Corporation*, Forfeiture Order, DA 08-26 (Enf. Bur. South Central Region January 9, 2008) (“*Forfeiture Order*”).

<sup>2</sup> 47 C.F.R. §§ 17.50, 17.57.

repeated violation of Sections 17.50 and 17.57 of the Rules.<sup>3</sup> IBC submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture. On January 9, 2008, the Enforcement Bureau (“Bureau”) released the *Forfeiture Order*. The Bureau received IBC’s petition for reconsideration on February 7, 2008, requesting reduction or cancellation of the forfeiture.

### III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In examining IBC’s petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.<sup>7</sup>

6. IBC again requests that the forfeiture for the painting violation be reduced or cancelled because of its prompt actions to remedy the violation after the agents’ inspections in September. IBC reiterates that it admitted that the tower needed painting and hired a contractor to repaint the tower within a week of the first inspection. IBC also states that the antenna structure was repainted as of January 15, 2008, the date on which it paid the painter for his services, thus halting the repeated nature of the violation. IBC, however, raises no new arguments that would cause us to reconsider the South Central Region’s decision. On September 7 and 11, 2007, the paint on the antenna structure was extremely faded and washed away. The tower paint was in such a condition that IBC should have repainted it before the agents’ inspection. Thus, its violation was repeated and willful even prior to the agents’ two inspections in September. Although we appreciate IBC’s prompt efforts to come into compliance, it is well established that corrective action taken to come into compliance with the Rules is expected, and does not nullify or mitigate any prior forfeitures or violations.<sup>8</sup> IBC provided no evidence that it attempted to bring its antenna structure into compliance *prior* to the agents’ inspection.

7. Similarly, we reject IBC request that the forfeiture for its antenna structure registration violation be reduced or cancelled. IBC reiterates that it had difficulty updating the ownership information for its antenna structure because the previous structure owner did not have a FCC Registration Number. Moreover, IBC states that it took steps to update the ownership information after the inspection. However, IBC owned its antenna structure for several years prior to the agents’ inspection and failed to take *any* steps to update the ASR ownership information. Thus, as with its tower painting violation, IBC’s violation was willful and repeated even prior to the agents’ inspection. IBC’s prompt contact with the Commission to update its information after the agents’ inspection was expected and does not nullify or mitigate the prior violation.

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<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832680001 (Enf. Bur., San Juan Office, November 13, 2007) (“*NAL*”).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> *See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

8. Finally, we deny IBC's request that the forfeiture be reduced based on its voluntary disclosure of its violations and good faith efforts to comply with the Rules. IBC did not voluntarily disclose its violations prior to a Commission inspection. Rather, IBC provided truthful responses to agents from the San Juan Office during the course of an inspection. In addition, as discussed in more detail above, although IBC took prompt steps to come into compliance after the inspections, such actions are not considered grounds to reduce a forfeiture on the basis of good faith.<sup>9</sup> IBC also requests for the first time a reduction of the forfeiture based on its history of compliance. Based on IBC's history of compliance with the Rules, we reduce the forfeiture to \$10,400.

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>10</sup> and Section 1.106 of the Commission's Rules,<sup>11</sup> International Broadcasting Corporation's petition for reconsideration of the January 9, 2008 *Forfeiture Order* **IS** hereby **DENIED IN PART** and **GRANTED IN PART**.

10. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> International Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand four hundred dollars (\$10,400) for violation of Sections 17.50 and 17.57 of the Rules.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

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<sup>9</sup> See *id.*

<sup>10</sup> 47 U.S.C. § 405.

<sup>11</sup> 47 C.F.R. § 1.106.

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 17.50, 17.57.

12. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to International Broadcasting Corporation at its address of record and to its counsel, Richard F. Swift, Irwin, Campbell & Tannenwald, 1730 Rhode Island Avenue NW, Suite 200, Washington DC, 20036-3101.

**FEDERAL COMMUNICATIONS COMMISSION**

George R. Dillon  
Associate Chief, Enforcement Bureau